

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the E-rate)	WC Docket No. 13-184
Program for Schools and Libraries)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

November 8, 2013

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

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The National Cable & Telecommunications Association (NCTA) supports the Commission's efforts to modernize the E-rate program. In these reply comments, we address a number of issues that will be critical to the success of any reform efforts.

INTRODUCTION AND SUMMARY

The initial comments that were filed in response to the *Notice* demonstrate both the incredible opportunity presented by E-rate reform and the challenge the Commission will face in implementing such changes. The record shows that many schools already are using state-of-the-art broadband services to improve the educational experience of their students, while many other schools are looking for E-rate reform to enable them to achieve the same results. We agree with many commenters who support improvements in the current E-rate program to increase the educational return on technological investment. But the record also demonstrates that, absent appropriate safeguards and focus, policymakers run the risk of misdirecting scarce resources and imposing greater funding burdens that could substantially increase the contribution burden on American consumers to unsustainable levels and undermine support for the program.

In these reply comments, NCTA offers suggestions for how the Commission can maximize the effectiveness of the E-rate program while continuing to ensure that the size of the

Universal Service Fund does not place excessive contribution burdens on American consumers. As a threshold matter, the Commission must establish a clear and enforceable budget for the E-rate program. Once a budget is set, the Commission should establish priorities for how the budgeted funds are to be spent, including taking steps to direct more money to broadband connections and related services and equipment, including internal connections and Wi-Fi, while avoiding policies that would unnecessarily burden the program, such as prioritizing funding to duplicate or overbuild existing broadband networks that already deliver, or are capable of delivering, high capacity services to schools and libraries. In addition, any reform of the E-rate program should not include an obligation to publicly disclose all bids for supported services, nor should it include preferential treatment for applications submitted by consortia.

I. THE COMMISSION MUST ESTABLISH A BUDGET FOR THE E-RATE PROGRAM

As part of any significant reform of the E-rate program, it is critical that the Commission continue to act as a responsible steward of the public's money. Like other aspects of the Universal Service Fund, the E-rate program is ultimately paid for by consumers. The contribution rate typically exceeds 15 percent already, and any increase in the overall size of the USF program would cause that number to increase.

The initial comments confirm that the E-rate program could grow to unsustainable levels unless the Commission takes affirmative steps to prevent such a result. A significant number of parties urge the Commission to expand the size of the E-rate program, in some cases by over 100 percent or more.¹ As the Commission moves forward with modernizing the E-rate program, it must be cognizant of, and take steps to limit, the burden on American consumers.

¹ See, e.g., EdLiNC Comments at 10-11 (advocating a permanent increase in the E-Rate cap to \$5 billion); see also Cisco Comments at 14-15; SETDA Comments at 22.

At this stage, perhaps the most important step the Commission can take is to establish a budget for the program and establish procedures to enforce that budget. Addressing the budget framework for the program first provides a needed opportunity for the Commission to begin the essential process of figuring out how to balance the technology needs of schools and libraries with the financial burdens to be placed on American consumers.

II. THE E-RATE PROGRAM SHOULD PROMOTE IMPROVED BROADBAND CAPABILITY IN A FISCALLY RESPONSIBLE MANNER

Regardless of the overall budget the Commission adopts for the E-rate program, it will be critical for the Commission to establish rules and procedures to ensure that E-rate funding is used in a manner that achieves the maximum benefit for students.

A. The Commission Must Establish Safeguards if it Permits Schools to Use E-rate Funds to Construct Fiber Networks

The *Notice* could be read to suggest that the overwhelming majority of schools are starved for bandwidth,² but the record developed in the initial round of comments demonstrates that this is an incomplete portrayal of the current situation. The comments make clear that there are a significant number of school districts that already have state-of-the-art broadband facilities in use. For example, Time Warner Cable offers fiber-based services to hundreds of schools in North Carolina.³ Other cable operators, such as Cox and Comcast, identified numerous other school districts that they serve through high-capacity services.⁴ In addition to these private sector efforts, existing government programs, such as the Broadband Technology Opportunities Program (BTOP) administered by NTIA, have enabled the deployment of upgraded facilities to

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11307 ¶ 5 (2013) (*Notice*).

³ NCTA Comments at 3.

⁴ *Id.* at 3-4; Cox Comments at 1-3 (describing fiber project in Arizona and Kansas); Comcast Comments at 10-11.

thousands of schools across the country.⁵ For example, the West Virginia Department of Education explained that, “[w]ith the BTOP program through NTIA, West Virginia has attained 100 percent access to fiber to all schools.”⁶

Moreover, the record also makes clear that fiber-based services already are available from cable operators and other providers in the marketplace throughout most of the country, even if they are not currently being purchased by schools. NCTA explained that cable operators generally offer schools the same type of fiber-based services that are offered to commercial customers.⁷ Similarly, NTCA and WTA conducted a survey of their members demonstrating that “in many rural areas the laudable vision of connecting schools and libraries is already being realized or evolving toward success, and that RLECs in the vast majority of cases have sufficient capacity in place to meet today’s (and tomorrow’s foreseeable) demands.”⁸

Against this backdrop, and given the fiscal constraints under which the program should be operated, the Commission should take a skeptical approach to proposals by some parties that would turn the E-rate program into a mechanism that is focused on subsidizing school-owned or municipally-owned fiber networks.⁹ In particular, subsidizing such networks raises two separate sets of concerns.

⁵ See NTIA Press Release, *Connecting America’s Schools to Next-Generation Broadband* (July 1, 2013) (“Overall, roughly 10,000 schools in 44 states are being connected or upgraded, and almost 70 percent are getting access to speeds of at least 100 megabits.”), at http://www2.ntia.doc.gov/connecting_americas_schools_to_next-generation_broadband.

⁶ West Virginia Department of Education Comments at 7. Numerous other BTOP projects have delivered high-capacity networks to schools throughout the country. See, e.g., NTIA Press Release, *Bringing Broadband to Schools in Rural Michigan* (Aug. 16, 2013), at <http://www2.ntia.doc.gov/node/863>; *MBG Connects K-12 Schools in Southern Virginia* (describing BTOP project that connected more than 120 schools) (Oct. 15, 2013), at <http://unified-communications.tmcnet.com/topics/unified-communications/articles/356778-mbc-connects-k-12-schools-southern-virginia.htm>.

⁷ NCTA Comments at 4.

⁸ NTCA/WTA Comments at 13.

⁹ See Connected Nation Comments at 16-19; New America Foundation Comments at 4-7.

First, as NCTA and others explained in their initial comments, such projects should be permitted only when they are more cost effective than purchasing service from an existing provider.¹⁰ Such a comparison must consider all the costs of installing and operating the facilities, including all construction costs, all equipment costs, and all anticipated maintenance costs. Recipients seeking funding for such projects also should be required to demonstrate that they have personnel with sufficient expertise to operate and maintain fiber networks once they are built.

Second, the Commission cannot ignore the significant drain on E-rate resources that could result from prioritizing construction of new fiber networks. As the Council of Great City Schools explains, “those investment costs are significant, and the Commission needs to consider the amount of increased funds that will be available – on a permanent or one-time basis – and if they are significant enough to support applicant build-out. The cost for building and owning a WAN infrastructure, including trenching, running conduit, establishing right of ways, typically requires a major capital expenditure that most school districts cannot afford. The school district may also need to acquire land or lease the right of way for conduit runs, which can drive up the cost of the project exponentially.”¹¹

The Commission’s *Rural Health Care Order* addressed similar concerns and serves as a model for how the Commission can address them in the context of the E-rate program.¹² While the Commission did not prohibit rural health care providers from constructing their own

¹⁰ NCTA Comments at 9; Council of Great City Schools Comments at 9. A number of parties, primarily incumbent telephone companies, suggest that the Commission should not permit any funding to be used for school-owned or municipally-owned networks. See, e.g., ITTA Comments at 15-17, USTelecom Comments at 15-16.

¹¹ Council of Great City Schools at 9.

¹² *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Rural Health Care Order*).

networks with universal service support, it made clear that it expected such construction to occur “only where it is absolutely necessary” in areas where broadband “is currently unavailable and where service providers lack sufficient incentives to construct it.”¹³ It also required health care providers to solicit bids for both purchasing services and self-construction and to demonstrate that self-construction is the more cost effective option.¹⁴ The Commission should adopt a similar approach in the context of E-rate reform to ensure that E-rate funds are used for the construction of fiber networks by schools and municipalities only where other options are not available or are more expensive to implement.

The Commission also established a cap on the amount of Rural Health Care funding that can be spent each year on self-construction projects. The Commission found that a cap would “ensure that the Fund does not devote an excessive amount of support to large up-front payments for HCP self-construction, which could potentially foreclose HCPs’ ability to use the Fund for monthly recurring charges for broadband services.”¹⁵ If the Commission determines that it should fund self-construction by schools and municipalities, establishing a cap on the funding available for this purpose would be particularly important in the context of the E-rate program because it already is significantly oversubscribed, in contrast to the Rural Health Care program which historically has had sufficient funding for all projects.

B. Increased Funding For Wi-Fi, Internal Connections, and Other Broadband-Related Services Is Essential

Rather than funding duplicative network infrastructure, the Commission should focus on reforms that will make it easier for schools to take advantage of available high capacity services. The initial comments demonstrate that one reason schools are not purchasing high bandwidth

¹³ *Id.* at 16711-12, ¶¶ 71, 73.

¹⁴ *Id.* at 16712-13, ¶ 73.

¹⁵ *Id.* at 16713, ¶ 75.

services is that they do not have the internal infrastructure to deliver that bandwidth into the classroom or the Wi-Fi capabilities for students in the classroom to connect to the network.¹⁶ In large part this problem is due to the fact that internal connections have been treated as Priority 2 services and therefore have received limited funding, particularly over the last few years.¹⁷

There is broad support for changing the rules to ensure that money is made available for internal connections and Wi-Fi that enable high-speed connections to be delivered all the way to the classroom. As one party explains, “[i]t is not enough that the capacity of school connections outside the building supports digital learning initiatives such as distance learning and virtual field trips, but that the technology is accessible in the classroom where the instruction and learning occur. If the program strives to obtain high capacity connections to each school building, but does not provide funding for new equipment inside the building to use the high-bandwidth connectivity, then the benefit of the capacity investment goes unfulfilled.”¹⁸

More specifically, improving the capability of internal connections within the school building and use of Wi-Fi within classrooms opens up significant educational opportunities.¹⁹ For example, McGraw-Hill Education explains that increased bandwidth in the classroom is a critical prerequisite to the use of online assessments.²⁰ In addition, The Quilt explains that using Wi-Fi in classrooms will be far more cost-efficient than using cellular services that currently are classified as Priority 1 services.²¹

¹⁶ State E-Rate Coordinators Alliance at 12-13; West Virginia Department of Education Comments at 37.

¹⁷ *See, e.g.*, E-Rate Provider Services Comments at 3; State E-Rate Coordinators Alliance at 12-13.

¹⁸ The Quilt Comments at 9.

¹⁹ As NCTA and other parties explained, for schools and libraries to fully take advantage of the capabilities of Wi-Fi technology, the Commission should expeditiously adopt rules that will enable Wi-Fi to maximize the use of additional spectrum bands, particularly at 5 GHz, but also in the 600 MHz and 3500 MHz bands. *See, e.g.*, NCTA Comments at 17-18; Comcast Comments at 19-20.

²⁰ McGraw-Hill Education Comments at 10.

²¹ The Quilt Comments at 9.

There are a variety of methods by which the Commission could increase funding for these services. For example, NCTA and many other parties advocate eliminating the existing distinction between Priority 1 and Priority 2 services so as to facilitate the use of funding for internal connections and Wi-Fi.²² Along the same lines, Funds for Learning proposes that the Commission permit applicants to “allocate their annual E-rate budget entirely as they see fit among eligible services in any category and to any of the eligible buildings in their school districts and library systems.”²³

For similar reasons, the Commission also should ensure that E-rate funding is available for services that are necessary for schools to use their broadband connections effectively, such as firewalls, content filtering and bandwidth controllers. The Commission should clarify that schools are entitled to be reimbursed for these services without regard to whether the price for each item is itemized or bundled into a single all-inclusive price. Additionally, schools and libraries are required to purchase content filtering software to comply with the requirements imposed under the Children’s Internet Protection Act and there is no policy basis for those costs not to be reimbursed by the E-rate program.

III. THE COMMISSION SHOULD TAKE STEPS TO LIMIT THE ADMINISTRATIVE BURDEN ON E-RATE PARTICIPANTS

The Commission sought comment on a variety of measures designed to increase the transparency of the E-rate process so as to “aid oversight of the E-rate program and drive down

²² NCTA Comments at 7,8; *see also, e.g.* Council of Great City Schools Comments at 12; Massachusetts Department of Telecommunications and Cable Comments at 5-6; City of Philadelphia Comments at 10; Weslaco Independent School District Comments at 10. Eliminating the current distinction between Priority 1 and Priority 2 does not eliminate the need to prioritize some types of services or recipients over others. The Commission will not be able to fund all services for all schools and therefore some prioritization system will always be needed.

²³ Funds for Learning Comments at 21.

the prices of E-rate supported services.”²⁴ In particular, the Commission asked whether it should make all bid responses available to the public or at least accessible to other E-rate applicants.²⁵

NCTA agrees with those parties that oppose establishing new disclosure requirements regarding the prices bid for E-rate supported services.²⁶ The combination of competitive bidding and the lowest corresponding price rule already achieves the Commission’s stated objective of driving down prices for supported services. Taking the additional step of publicizing all responses to E-rate RFPs adds no value in this regard. As one party explains, “the benefits of the methods proposed in the NPRM may be outweighed by the costs in time and effort by the applicants.”²⁷

There are a variety of negative consequences that could result from the proposal to publish all bids for E-rate supported services. As Sprint explains, “publicly available pricing information can be misused or misinterpreted if taken out of context, and public pricing information alone cannot be used to determine whether an E-rate applicant is getting the best possible price for the services it is requesting.”²⁸ Moreover, as the record demonstrates, there are

²⁴ Notice, 28 FCC Rcd at 11355, ¶ 191.

²⁵ *Id.* at 11355, ¶ 195.

²⁶ See, e.g., ITTA Comments at 12-13; Iowa Dept. of Education Comments at 12; LTS Buyer LLC, et al Comments at 5; South Dakota Dept. of Education Comments at 23; Sprint Comments at 15-16; USTelecom at 14-15; State E-Rate Coordinators Alliance Comments at 41-42.

²⁷ Iowa Dep’t of Education Comments at 12 (“The Department cautions that the benefits of the methods proposed in the NPRM may be outweighed by the costs in time and effort by the applicants. The Department questions to what end this increased transparency will result. Will bids be more competitive the following years? Will members of the public/citizens even care to examine E-rate bids and resulting costs? What additional burden will be placed upon applicants and will such efforts discourage participation in the E-rate program, especially for small districts and schools that currently receive one or no bids?”). See also State E-rate Coordinators Alliance Comments at 41 (“[c]reating and maintaining such a data base is an extremely burdensome task and does not seem to be of much use.”).

²⁸ Sprint Comments at 15.

a variety of reasons why the prices of E-rate services may vary from customer to customer, making direct comparisons among different schools and different providers difficult.²⁹

In addition to these concerns, publicly posting all bid prices could diminish the benefits of competitive bidding. As explained by the State E-rate Coordinators, “creating some kind of virtual bulletin board containing vendor prices for contracts and/or bids for services would discourage, not encourage, robust competition and/or lower prediscount prices because vendors would refrain from submitting bids for fear of having to publish confidential or proprietary information.”³⁰ Accordingly, for all these reasons, the Commission should not adopt its proposal to make all bid responses available to the public.

The Commission also should carefully consider the burden of extending the E-rate document retention period from five to ten years before adopting such a change. As several commenters note, the burden on E-rate participants of a ten year document retention period could be substantial, without much, if any, corresponding benefit.³¹

IV. THE COMMISSION SHOULD NOT ARTIFICIALLY ENCOURAGE THE USE OF CONSORTIA

The *Notice* raised a variety of questions regarding the use of consortia for purchasing services supported by the E-rate program.³² In response, a number of parties suggest that applications from consortia should be given preferential treatment over other applications for E-

²⁹ *Id.* (“Prices for E-rate services can legitimately vary from customer to customer depending on a number of factors, such as the length of the contract term (some service providers offer multiyear discounts), type and volume of services taken, the state in which the E-rate customer does business (the rates, terms and conditions of state master contracts, on which many E-rate contracts are based, do vary), and the mileage between the school or library and the switching facility.”); *see also* USTelecom Comments at 14.

³⁰ State E-rate Coordinators Alliance Comments at 41-42.

³¹ *See, e.g.*, E-Rate Central Comments at 8-9; Funds for Learning Comments at 60; State of Hawaii Comments at 14; ITTA Comments at 11-12; New York City Department of Education Comments at 8; USTelecom Comments at 3-5; Verizon Comments at 28-29; West Virginia Department of Education Comment at 110-112; Windstream Comments at 8.

³² *Notice*, 28 FCC Rcd at 11352-53, ¶¶ 180-85.

rate support. For example, NASCIO proposes that the Commission establish special incentives, such as additional funding, to encourage the use of consortia.³³ Similarly, a number of state entities ask that applications from consortia be prioritized by USAC.³⁴

NCTA does not agree that artificially encouraging the use of consortia by providing them with special treatment will advance the Commission's policy goals.³⁵ The record confirms that there are many situations where consortia may not be the most efficient option for purchasing services. The Wisconsin Department of Public Instruction offers an example of a case where the use of a large consortium resulted in increased broadband prices.³⁶ A number of other parties explain that the use of consortia may lead to increased prices as smaller companies are shut out of the bidding process.³⁷ This would reduce the number of competitive options available to schools and libraries. Similarly, Funds for Learning explains that consortia may make more sense for equipment purchases, where scale may lead to lower prices, but not for construction projects, where it may be more difficult to negotiate lower prices.³⁸ For all the reasons explained in these comments, there is no compelling reason to provide special treatment for purchases by consortia. Where a consortium is the most efficient way for a school to purchase E-rate services, it should be treated no better or worse than if the school purchased the same services on its own.

³³ NASCIO Comments at 2-3; *see also* Education Coalition Comments at 19-20; State Consortia Group Comments at 3-4.

³⁴ *See, e.g.*, Florida Dept. of Management Services: Division of Telecommunications Comments at 11; Pennsylvania Association of Intermediate Units Comments at 11-12.

³⁵ NCTA Comments at 16.

³⁶ Wisconsin Dep't of Public Instruction Comments at 3 n.6.

³⁷ Cox Comments at 5-6; Eastex Comments at 8.

³⁸ Funds for Learning Comments at 49.

CONCLUSION

For the reasons explained above, the Commission should establish a budget framework for the E-rate program that balances the technology needs of schools and libraries with the needs of American consumers that ultimately foot the bill for the E-rate program. The Commission also should increase the amount of funding that is allocated to broadband and related services, including internal connections and Wi-Fi, while also establishing safeguards to ensure that excessive funding is not devoted to construction of new fiber networks by schools and municipalities. Finally, the Commission should not establish new disclosure obligations on providers, nor should it create any sort of preferential treatment for applications submitted by consortia.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

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